



### **JURISDICTION AND VENUE**

4. Centocor and NYU admit that the Counterclaims purport to set forth claims arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, but deny that Abbott has any such cause of action in fact or law.

5. Centocor and NYU admit that this Court would have subject matter jurisdiction over counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338(a) and Title 35 of the United States Code, but deny that Abbott's counterclaims are true and/or sufficient.

6. Centocor and NYU admit that they have asserted U.S. Patent No. 7,070,775 ("the 775 patent") and U.S. Patent No. 7,276,239 ("the 239 patent") against Abbott such that an actual case or controversy exists with respect to those claims.

### **BACKGROUND**

7. Centocor and NYU admit the allegations set forth in paragraph 7 of the Counterclaims.

8. Centocor and NYU are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Counterclaims.

9. Centocor and NYU admit that Abbott has marketed and sold adalimumab in the United States, under the trade name Humira®, for the treatment of rheumatoid arthritis, psoriatic arthritis, ankylosing spondylitis, and Crohn's disease; but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 9 of the Counterclaims.

10. Centocor and NYU admit that they filed an application that issued as the 775 patent on July 18, 2002, but deny that this is "the" application that led to the issuance of the 775

patent to the extent that this statement may be construed as suggesting that priority for the 775 patent should somehow be limited to this filing date.

11. Centocor and NYU admit the allegations set forth in paragraph 11 of the Counterclaims.

12. Centocor and NYU admit that they filed an application that issued as the 239 patent on December 20, 2005 and that that application was a division of an application filed on July 18, 2002, but deny that this is "the" application that led to the issuance of the 239 patent to the extent that this statement may be construed as suggesting that priority for the 239 patent should somehow be limited to this filing date.

13. Centocor and NYU admit the allegations set forth in paragraph 13 of the Counterclaims.

#### **FIRST COUNTERCLAIM**

14. Centocor and NYU reassert and incorporate their answers to paragraphs 1 through 13.

15. Paragraph 15 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 15 of the Counterclaims.

16. Paragraph 16 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 16 of the Counterclaims.

#### **SECOND COUNTERCLAIM**

17. Centocor and NYU reassert and incorporate their answers to paragraphs 1 through 16.

18. Paragraph 18 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 18 of the Counterclaims.

19. Paragraph 19 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 19 of the Counterclaims.

### **THIRD COUNTERCLAIM**

20. Centocor and NYU reassert and incorporate their answers to paragraphs 1 through 19.

21. Paragraph 21 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 21 of the Counterclaims.

22. Paragraph 22 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 22 of the Counterclaims.

### **FOURTH COUNTERCLAIM**

23. Centocor and NYU reassert and incorporate their answers to paragraphs 1 through 22.

24. Paragraph 24 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 24 of the Counterclaims.

25. Paragraph 25 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 25 of the Counterclaims.

**FIFTH COUNTERCLAIM**

26. Centocor and NYU reassert and incorporate their answers to paragraphs 1 through 25.

27. Paragraph 27 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 27 of the Counterclaims.

28. Paragraph 28 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 28 of the Counterclaims.

**SIXTH COUNTERCLAIM**

29. Centocor and NYU reassert and incorporate their answers to paragraphs 1 through 28.

30. Paragraph 30 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 30 of the Counterclaims.

31. Paragraph 31 of the Counterclaims contains conclusions of law to which no response is required. To the extent that a response is deemed required, Centocor and NYU deny the allegations contained in paragraph 31 of the Counterclaims.

**AFFIRMATIVE AND OTHER DEFENSES**

**FIRST DEFENSE**

32. Abbott fails to state a claim against Centocor or NYU upon which relief may be granted.

**SECOND DEFENSE**

33. To the extent Abbott's Third Counterclaim is one premised on averments of fraud or mistake, Abbott has failed to plead the Counterclaim with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.

**THIRD DEFENSE**

34. To the extent Abbott's Sixth Counterclaim is one premised on averments of fraud or mistake, Abbott has failed to plead the Counterclaim with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.

**PRAYER FOR RELIEF**

WHEREFORE, Centocor and NYU respectfully demand the following relief:

- (a) a judgment in favor of Centocor and NYU against Abbott on Plaintiffs' Complaint, and an award to Centocor and NYU of the relief sought in their Complaint;
- (b) a dismissal with prejudice of Abbott's Counterclaims and denial of each request for relief against Centocor and NYU;
- (c) a judgment that this is an exceptional case and that Centocor and NYU be awarded costs, expenses, and reasonable attorney fees pursuant to 35 U.S.C. § 285; and
- (d) an award of such other and further relief as the Court may deem just and proper.

Dated: April 15, 2008

Respectfully submitted,

/s/ Dianne B. Elderkin

**DIANNE B. ELDERKIN**

**(Lead Attorney)**

elderkin@woodcock.com

**JOSEPH LUCCI**

**(Of Counsel)**

lucci@woodcock.com

**BARBARA L. MULLIN**

**(Of Counsel)**

mullin@woodcock.com

serafini@woodcock.com

**STEVEN D. MASLOWSKI**

**(Of Counsel)**

smaslows@woodcock.com

**LAUREN T. RABINOVIC**

**(Of Counsel)**

lrabinovic@woodcock.com

**WOODCOCK WASHBURN LLP**

Cira Centre, 12th Floor

2929 Arch Street

Philadelphia, PA 19104-2891

215-568-3100

FAX: 215-568-3439

**RICHARD A. SAYLES**

**(Of Counsel)**

Texas State Bar No. 17697500

dsayles@swtriallaw.com

**EVE L. HENSON**

**(Of Counsel)**

Texas State Bar No. 00791462

ehenson@swtrial.com

**JOHN D. ORMOND**

**(Of Counsel)**

Texas State Bar No. 24037217

jormond@swtriallaw.com

**SAYLES|WERBNER**

*A Professional Corporation*

4400 Renaissance Tower

1201 Elm Street  
Dallas, Texas 75270  
(214) 939-8700  
FAX (214) 939-8787

**ATTORNEYS FOR PLAINTIFFS  
CENTOCOR, INC. and  
NEW YORK UNIVERSITY**



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiffs' Reply to Defendants' Counterclaim was served via ECF filing on counsel of record, as follows, on April 15, 2008.

David J. Beck  
Texas Bar No. 00000070  
BECK, REDDEN & SECREST, L.L.P.  
One Houston Center  
1221 McKinney St., Suite 4500  
Houston, TX 77010  
Telephone: (713) 951-3700  
Facsimile: (713) 951-3720  
Email: [dbeck@brsfirm.com](mailto:dbeck@brsfirm.com)

Michael E. Richardson  
State Bar No. 24002838  
BECK, REDDEN & SECREST, L.L.P.  
One Houston Center  
1221 McKinney St., Suite 4500  
Houston, TX 77010  
Telephone: (713) 951-3700  
Facsimile: (713) 951-3720  
Email: [mrichardson@brsfirm.com](mailto:mrichardson@brsfirm.com)

William F. Lee  
WILMER CUTLER PICKERING HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
Facsimile: (617) 526-5000  
Email: [william.lee@wilmerhale.com](mailto:william.lee@wilmerhale.com)

William G. McElwain  
Amy Kreiger Wigmore  
WILMER CUTLER PICKERING HALE AND DORR LLP  
1875 Pennsylvania Avenue, N.W.  
Washington, DC 20006  
Telephone: (202) 663-6000  
Facsimile: (202) 663-6363  
Email: [william.mcelwain@wilmerhale.com](mailto:william.mcelwain@wilmerhale.com)  
Email: [amy.wigmore@wilmerhale.com](mailto:amy.wigmore@wilmerhale.com)

Robert J. Gunther, Jr.  
WILMER CUTLER PICKERING HALE AND DORR LLP  
399 Park Avenue  
New York, NY 10020  
Telephone: (212) 230-8830  
Facsimile: (212) 230-8888  
Email: [robert.gunther@wilmerhale.com](mailto:robert.gunther@wilmerhale.com)

Eric P. Martin  
Jose Enrique Rivera  
ABBOTT LABORATORIES  
Dept. 324, Bldg. AP6A-1, 100  
Abbott Park Road  
Abbott Park, IL 60064-6008  
Telephone: (847) 938-3887  
Facsimile: (847) 938-6235  
Email: [eric.martin@abbott.com](mailto:eric.martin@abbott.com)  
Email: [jose.rivera@abbott.com](mailto:jose.rivera@abbott.com)

/s/ Dianne B. Elderkin  
Dianne B. Elderkin